IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 107 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Applicant(s)
Versus
IQBAL IBRAHIM KURESHI - Respondent(s)

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Appearance :

Mr.A.J. Desai, ADDL. PUBLIC PROSECUTOR for Applicant(s) : 1,
MR PRAVIN GONDALIYA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 07/09/2006

ORAL JUDGMENT

The State of Gujarat, through the learned Public Prosecutor, High Court of Gujarat, Ahmedabad is before this Court praying for quashing and setting and setting

aside the judgement and order dated 15.12.2000 passed by the learned Magistrate, Exh.20 in Criminal Case No.4360 of 1997 passed by the learned Judicial Magistrate, First Class (Municipal), Rajkot.

2. The learned APP, Mr.Desai submitted that the application, exh.20 filed in Criminal Case No.4360 of 1997 at page 8 of this Criminal Revision Application sets out the facts and the gist of the facts set out is that though the cheques were returned on 30.05.1997 and the Bank had sent an intimation to the complainant on 30th May 1997, the complainant gave notice to the accused/ applicant on 20.08.1997 and thereafter, the complaint is filed on 19.09.1997. The contention is that as the notice was not issued within 15 days, as required under the Negotiable Instruments Act, the notice is not valid and is barred by period of limitation. Therefore, the complaint based on such notice is also not in accordance with law and therefore, no offence is made and the complaint be quashed and the accused be discharged.

3. The learned Judge after recording the facts of the case and the contentions raised on behalf of the accused, passed the order under challenge and under the provisions of section 245 (2) of the Code of Criminal Procedure,

discharged the accused.

4. Mr.Desai invited attention of this Court to the provisions of section 245 (2) of the Code of Criminal Procedure. Section 245 of the Code provides, 'as to when the accused shall be discharged'. Subsection (1) of section 245 deals with the situation when upon taking all the evidence referred to in section 244, if the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out, the Magistrate may discharge the accused.

Subsection (2) of section 245 reads as under:

> “Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.”

5. Mr.Desai, the learned Additional Public Prosecutor submitted that subsection (2) of section 245 has no application to the facts of the present case. Therefore, the order passed by the learned JMFC is required to be quashed and set aside in the interest of justice. Mr.Desai, the learned APP relied upon the decision of

the Hon'ble the Apex Court in the matter of **John Thomas Vs. Dr.K. Jagadeesan**, reported in (2001) 6 SCC 30. He submitted that though the case relates to section 258 of the Code of Criminal Procedure, a similar analogy can be drawn and holding that the provision of subsection (2) of section 245 is not applicable to the facts of the present case as the Hon'ble the Apex Court was pleased to hold that the order of discharge is bad and similar view be taken in this matter and the order of the learned JMFC be quashed.

6. The learned APP has also relied upon the decision of this Hon'ble Court in the matter of **Mehta Prafulchandra Kalidas Vs. Patel Cheljibhai Kalidas and another**, reported in 2006 (1) GLH 211, wherein also this Court considering that the provisions of section 258 are not applicable to the case when a case is instituted on a private complaint, was pleased to set aside the acquittal and the complaint was restored. The learned APP submitted that a similar view be taken in this matter.

7. Mr.Gondaliya, the learned advocate appearing for the respondent herein-original accused could not dislodge the submissions of the learned APP. He submitted that the fact remains that the notice, issued by the complainant

was beyond the period of limitation prescribed under law-Negotiable Instruments Act. He submitted that if trial is to fail, the learned JMFC was right in discharging the accused and in the interest of justice and taking into consideration the fact that in the trial there is no chance of success for the complainant as the complaint is barred by limitation as the notice given to the accused is beyond the period of limitation, the learned JMFC was right in passing the order.

8. Taking into consideration the rival submissions and taking into consideration the settled position of law, the judgment and order of the learned JMFC, Rajkot cannot be allowed to stand.

It will be appropriate to observe that factum of allowing of this Revision Application and quashing of order passed by the learned JMFC shall not influence the trial in any manner and that the same should proceed on merits in accordance with law. Order accordingly.

The complaint is restored to file. The Criminal Revision Application is allowed. Rule is made absolute.

(RAVI R. TRIPATHI, J.)

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